

UNITED STATES OF AMERICA
UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

MOUNT HOPE CHURCH,)	
)	
Plaintiff,)	Case No. 1:09-cv-427
)	
v.)	Honorable Robert Holmes Bell
)	
BASH BACK!, et al.,)	
)	<u>ORDER ENFORCING SUBPOENA</u>
Defendants.)	
)	

Plaintiff has moved for an order enforcing a subpoena served upon Berl Schwartz, Editor of the City Pulse Newspaper. Mr. Schwartz, through counsel, opposes the motion to compel. The court conducted a hearing on the motion on November 29, 2010. At the hearing, counsel for Mr. Schwartz indicated that Mr. Schwartz has produced all photographs in his possession, custody, or control and that photographs in possession of the former intern are not available to him. Counsel related that the only other documents responsive to the subpoena are three e-mails. At the hearing, the court ruled that the subpoenaed party is not entitled to the protection of any privilege, *see In re Grand Jury*, 810 F.2d 580 (6th Cir. 1987), and that the balance of factors made relevant under Fed. R. Civ. P. 26(b)(2)(C) and 45(c) does not militate in favor of quashing or modifying the subpoena. Accordingly, for the reasons set forth more fully on the record:

IT IS ORDERED that plaintiff's motion to compel (docket # 122) be and hereby is GRANTED IN PART AND DENIED IN PART as follows:

A. Plaintiff's request for production of photographs is DENIED as moot, the court finding that further photographs are not within the possession, custody, or control of the Editor of the City Pulse Newspaper. This finding is without prejudice to plaintiff's ability to seek further information concerning the custody and whereabouts of photographs by deposition.

B. No later than **December 1, 2010, at 5:00 p.m.**, Berl Schwartz, Editor of City Pulse Newspaper, shall submit to the court for *in camera* inspection all documentary evidence in his possession, custody, or control, including e-mails, responsive to the subpoena dated April 7, 2010. After *in camera* inspection, the court will determine whether the documents are discoverable and issue a subsequent order.

C. All requests for contempt citations and sanctions are hereby DENIED.

DONE AND ORDERED this 29th day of November, 2010.

/s/ Joseph G. Scoville
United States Magistrate Judge